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No. 609

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

EMMA R. MOIST, etc., et al.,
Petitioners,

v.

BERNARD BELK, etc., et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SIXTH CIRCUIT COURT OF APPEALS

BRIEF OF CONSTANTINE A. TSANGADAS, ONE OF THE RESPONDENTS OPPOSING THE PETITION FOR WRIT OF CERTIORARI

CONSTANTINE A. TSANGADAS,
Respondent in pro. per.,
2026 Dime Building,
Detroit, Michigan 48226.

Interstate Brief & Record Co., 356 E. Congress St., Detroit, Michigan 48226
WO. 2-8745—WO. 2-8732

SUBJECT INDEX

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SUBJECT INDEX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. .....

EMMA R. MOIST, individually and as assignee of Sidney M. Harvey and William T. McAlonan; LOUISE C. KUSHIGIAN, Administratrix of the Estate of Thersie K. Henkle, deceased; GEORGIANA S. WHITMAN, survivor of herself and Henry R. Whitman, deceased, and EVELYN M. SANDERS, Special Administratrix of the Estate of Muriel Miller, deceased,

Petitioners,

versus

BERNARD BELK, individually and as alleged "Receiver" of Brookdale Cemetery Association and Brookdale, Inc., alleged Michigan corporations, GEORGE LEWIS, individually and as survivor of himself and Daniel Lewis and Saul Lewis, both deceased, formerly co-partners doing business as Lewis Brothers and as Lewis Bros., Inc., Lewis Brothers Memorial Chapel, Daniel Lewis & Brothers, Lewis Bros. Funeral Directors, Inc., and Mt. Sinai Memorial Cemetery Association, CHARLOTTE L. KLINE, Administratrix of the Estate of Saul Lewis, deceased, NAOMI V. HILSEN and RICHARD E. MANNING, successor administrators, duly appointed of the Estate of Daniel Lewis, deceased, BROOKDALE CEMETERY ASSOCIATION, an alleged Michigan Rural Cemetery Association, BROOKDALE, INCORPORATED, an alleged Michigan Profit corporation, CONSTANTINE A. TSANGADAS, JOHN R. STARRS, STANLEY E. BEATTIE, RALPH W. McKENNEY, SYDNEY LIST, DAPHNE LIST, JAMES M. WIENNER, Administrator of the Estate of Harris W. Wjenner, deceased, and DEPARTMENT OF COMMERCE, formerly Corporation and Securities Commission, of the State of Michigan,

Respondents.

BRIEF OF CONSTANTINE A. TSANGADAS, ONE OF THE RESPONDENTS OPPOSING THE PETITION FOR WRIT OF CERTIORARI.

Comes now Constantine A. Tsangadas, one of the individual Respondents herein, and in opposition to plaintiffs' petition for writ of certiorari, says:

I.

OPINION BELOW

Plaintiffs are, by Rule 23, section 1(a), required to append to their petition all "opinions delivered in the courts below." The opinion of the District Court granting this defendant's motion for summary judgment has been referenced but not appended. Defendant appends it as Appendix A hereto.

II.

JURISDICTIONAL STATEMENT

This defendant agrees that plaintiffs purport to be proceeding under 28 USCA §1254, 62 Stat. 928.

III.

QUESTION PRESENTED FOR REVIEW

This defendant agrees with the statement of plaintiffs of the question presented for review.

IV.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

This defendant agrees that the cited constitutional and statutory provisions cited by plaintiffs are allegedly involved herein.

V.

STATEMENT

The eight-page "Statement" by plaintiffs is so replete with half-truths and misstatements that this defendant is loathe to begin a detailed dissection thereof. Suffice it to say that the non-denial of certain matters set forth in the "Statement" is based upon the presence of this defendant's motion for summary judgment; yet the "Statement" includes many non-facts, many opinions, many matters specifically contradicted by plaintiffs' own pleadings. Admission of facts properly pleaded, for the purpose of a motion for summary judgment, cannot, under our jurisprudence, be transmuted into an admission of improperly pleaded conclusions and opinions. But since the opinion of the District Court, Appendix A hereto, shows the positive lack of jurisdiction in the District Court, certain references thereto will not be amiss.

Plaintiffs' counsel conceded on the record that the State Court had jurisdiction over the subject matter of the receivership and had *in personam* jurisdiction over the parties therein (pp. 9 & 14, Appendix A hereto).

Plaintiffs' counsel conceded on the record that plaintiffs, despite counsel's urging failed to seek review of the State Court action, which allegedly violated their civil and constitutional rights. This failure was knowing and deliberate, and unexplained on the record (pp. 9 & 14) Appendix A hereto).

For reasons noted by the District Court, plaintiffs thus admitted themselves out of court. It would serve no useful purpose for this defendant to repeat the points made by the District Judge, concurred in by the Court of Appeals.

VI.

REASONS FOR DENYING WRIT

Petitioners have failed to comply with rule 23, section 4 in that their "Statement" is neither accurate, brief, nor clear.

Their statement is inaccurate because it fails to disclose what the exhibits to the original complaint disclose: that all of the action of the Receiver of which complaint is made was taken pursuant to orders of the State Court, all of which were appealed by plaintiffs, and in none of which appeals plaintiffs prevailed.

Their statement is inaccurate in that it fails to disclose the decree of the Michigan Supreme Court entered December 8, 1959, and recorded with the Register of Deeds for Wayne County on December 11, 1959 in Liber 14110 at page 606, Wayne County Records, and appended hereto as Appendix B, from which decree no petition for certiorari to this court was ever filed.

Their statement is inaccurate in that it fails to disclose their own petition to vacate the Michigan Supreme Court Decree, the relevant text of which is appended hereto as Appendix C, on page 11 of which appears the following language:

> "8. * * * by proceedings hereinabove specified and referred to plaintiffs have been and are deprived of the equal protection of the Laws and of due process of law in violation of constitutional provisions as follows * * *"

Their statement is inaccurate in that it fails to disclose that their own petition to vacate (Appendix C hereto) was denied by order of the Michigan Supreme Court entered June 28, 1961, copy of which order is appended hereto as Appendix D, and that no petition to this Court for a writ of certiorari was ever filed.

Their statement is not brief.

Their statement is not clear in that, as the District Judge observed of their original Complaint, it is "so verbose, confused and redundant that its true substance, if any, is well disguised" (p. 7, Appendix A hereto).

Petitioners have not made out any Federal question at all, let alone any substantial Federal question. What the record plainly discloses from the bald admission of their counsel is that if they had any federal question they failed to ask that it be reviewed (p. 7, Appendix A hereto).

Further matters need no discussion.

CONCLUSION

The petition should be denied, with costs.

Done at Detroit, this 6th day of October, 1967.

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CONSTANTINE A. TSANGADAS,
Respondent In Pro. Per.,
2026 Dime Building,
Detroit, Michigan 48226.